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Supreme Court of the United States

OCTOBER TERM, 1966

No. 221

THE IOWA TRIBE OF THE IOWA RESERVATION IN OKLAHOMA, THE IOWA TRIBE OF THE IOWA RESERVATION IN KANSAS AND NEBRASKA, THE SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA, THE SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA, and THE SAC AND FOX TRIBE OF MISSOURI,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The petitioners, the Iowa Tribe of the Iowa Reservation in Oklahoma, the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, the Sac and Fox Tribe of Indians of Oklahoma, the Sac and Fox Tribe of the Mississippi in Iowa and the Sac and Fox Tribe of Missouri, petition for a writ of certiorari to review the judgment of the United States Court of Claims.

Opinions Below

The opinion of the Court of Claims (App. B, p. 24a) is not yet reported. The opinion of the Indian Claims Commission dealing with the question here presented (App. A, p. 1a) is reported at 12 Ind. Cl. Com. 519.

Jurisdiction

The judgment of the Court of Claims was entered March 17, 1967. The jurisdiction of this Court is invoked under Section 20(c) of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 1054, 25 U.S.C. 70s, and under 28 U.S.C. 1255(1).

The Question Presented

In accordance with the jurisdiction specifically given to the Indian Claims Commission to hear and determine all claims in equity, 60 Stat. 1049, 1050, 25 U.S.C. 70a, are the petitioners entitled to recover on a cause of action seeking enforcement of a constructive trust? In other words, does the Indian Claims Commission Act permit the government to limit its liability and to retain the profits it made as the result of an unconscionable transaction with Indians?

The Statute Involved

The Indian Claims Commission Act, 60 Stat. 1049, 1050, 25 U.S.C. 70a provides:

> "The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; * * *."

Statement

By treaties dated August 4, 1824 (7 Stat. 229; 7 Stat. 231), the petitioners ceded certain lands to the United States. The Indian Claims Commission has found that the lands ceded by the Iowa Nation had what the Commission called a "fair market value" as of the cession date of $698,040.00, and that the consideration paid was $19,846.23 (representing approximately 2.8% of what the Commission found the fair market value to be). The Commission has also found that the lands ceded by the Sac and Fox Nation had a "fair market value" as of the cession date of $993,360.00, and that the consideration paid was $27,799.61 (representing approximately 2.8% of what the Commission found that the fair market value to be). The Commission concluded that the consideration paid to each petitioner tribe was unconscionable.

The "fair market values" found by the Commission are purely arbitrary sums, unrelated to actual sales prices. Thus, the Commission stated:

> "The Commission will concede that there was no open or actual market for these lands in the true sense of the word as of the effective cession dates, but our numerous and detailed findings made herein attest to the plain fact that the Commission has found more than ample evidence upon which to estimate their 1825 fair market value." (App. A, p. 3a).

The Commission found that contemporaneous, private sales of unimproved lands in a nearby area which it found was reasonably comparable for valuation purposes, brought an average per acre price of 84 cents (App. A, pp. 17a, 21a). In 1825, the statutory minimum price at which the government could sell public lands was $1.25 per acre, having been reduced to that figure from $2.00 per acre by the Act of April 2, 1820. This legislation had been enacted pursuant to a national policy to encourage settlement of the frontier without any concern that the government recover a fair economic return for public lands. Although the figure of $1.25 per acre had nothing to do with the actual value of the land, yet this court has held that it is to be taken as the measure of compensation for land taken from Indians and granted for public purposes. *New York Indians* v. *U. S.*, 170 U. S. 614 (1898), and *U. S.* v. *New York Indians*, 173 U. S. 464, Footnote, p. 466 (1899). The Commission's conclusions herein as to "fair market value" present what it admitted was merely an estimate, and which involved a substantial discount from either the statutory minimum price or the prices realized upon the private re-sale of comparable lands.

There was undisputed evidence that the United States Government had actually received, upon the disposition by it of the lands ceded by the Iowa Nation, a consideration worth $1,856,877.53, or approximately 94 times what it paid the Indians, and approximately 2⅔ times what the Commission found was the "fair market value".

There was likewise undisputed evidence that the United States Government had actually received, upon the disposition by it of the lands ceded by the Sac and Fox Nation, a consideration worth $1,468,806.00, or approximately 53 times what it had paid the Indians, and nearly 1½ times what the Commission found was the "fair market value".

In the petition filed with the Indian Claims Commission, petitioners asserted five separate Causes of Action. The Third Cause of Action (Paragraph 34 of the Petition) specifically invoked Clause (2) of Section 2 of the Indian Claims Commission Act and sought recovery in equity of the profits wrongfully obtained by defendant upon sale of the ceded lands in violation of its fiduciary obligations. In short, the Third Cause of Action sought enforcement of a constructive trust.

The First and Fourth Causes of Action (Paragraphs 32 and 35) sought recovery of the difference between the consideration actually paid for the ceded lands and either just compensation therefor or the fair value thereof.

The Fifth Cause of Action (Paragraphs 36 to 39) sought recovery under Clause (5) of Section 2 of the Act, on the basis of fair and honorable dealings.

The Commission and the Court of Claims both awarded to petitioners a recovery under the First and Fourth Causes of Action, namely, the difference between the consideration paid and the fair market value of the land. Hav-

ing so ruled, the Court of Claims held that petitioners were not entitled to enforcement of a constructive trust, as specifically sought in their Third Cause of Action. The Court of Claim's discussion of this point is in Part VI of its opinions at (App. B, p. 42a)..

Reasons for Granting the Writ

The Court of Claims has decided a question of substance and of importance to cases arising under the Indian Claims Commission Act, which has not been determined by this Court. Its decision unduly restricts the jurisdiction specifically granted by the Congress to the Indian Claims Commission, in contravention of the intent of Congress as clearly expressed both in the statute itself and in its legislative history, that equitable relief, such as the enforcement of a constructive trust, is to be awarded to Indian tribes in appropriate circumstances. Moreover, the decision of the Court of Claims permits the United States, notwithstanding its obligation to deal with Indians in accordance with the most exacting fiduciary standards, to retain profits made as the result of an indisputably unconscionable transaction with the Indian petitioners.

1.

Congress specifically granted to the Commission the full equitable jurisdiction of the federal courts: "* * * all * * * claims in equity * * * with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit * * *." (60 Stat. 1050, 25 U.S.C. §70a (2)).

2.

The intention of Congress to extend a broad measure of relief to Indian claimants under the Act was made clear

by the Court of Claims, after a thorough review of the legislative history of the Act, in *Otoe and Missouri Tribe of Indians* v. *United States,* 131 Ct. Cl. 593, 131 F. Supp. 265 at 271-275 (1955), cert. denied, 350 U. S. 848 (1955).

That Congress intended broad jurisdiction be given the Indian Claims Commission appears from the statement of Congressman Jackson in presenting the Bill to the House when he said:

> "It was the unanimous opinion of the Committee that the jurisdiction of the Commission ought to be broad enough so that no tribe could come back to Congress 10 years from now and say that it had a meritorious claim which the Claims Commission was not authorized to consider." (Congressional Record—House, May 20, 1946, p. 5312.)

Following passage of the Act, Congressman Mundt, in an extension of remarks on July 30, 1946 (Appendix to the Congressional Record A4923) stated:

> "Mr. Speaker, the passage of the Indian Claims Commission bill, H.R. 4497, by the Congress represents a great landmark in our treatment of the American Indians. By this bill the United States, as a sovereign Nation, consents that it shall be subject to suit by any Indian tribe not only upon claims that arise in law or equity under the Constitution, but also upon claims not recognized by any existing rule of law or equity, which have as their bases unfair and dishonorable dealings on the part of the United States. In other words, if any Indian tribe can prove that it has been unfairly and dishonorably dealt with by the United States it is entitled to recover. This ought to be an example for all the world to follow in its treatment of minorities."

3.

The imposition and enforcement of a constructive trust is a well recognized head of equity jurisdiction, designed to prevent unjust enrichment or to deny a party the fruits of unconscionable behavior. 4 *Scott on Trusts* (2d Ed.), §§461-462.6; *Bogert on Trusts* (2d Ed.), §471 *et seq.*; 3 *Pomeroy's Equity Jurisdiction,* (4th Ed.) §1053; 54 *Am. Jur.*, "Trusts" §§225-229; 89 *Corp. Jur. Sec.* "Trusts", §139, p. 1015 *et seq.* The cited authorities refer to many federal decisions in support. See also *Moore* v. *Crawford,* 130 U. S. 122, 128 (1889).

4.

A constructive trust is not of itself a fiduciary relationship, 4 *Scott on Trusts,* §462.1; *Salisbury* v. *Tibbetts,* 259 F. 2d 59, 64 (10 Cir. 1958), although it may arise where there has been an abuse of a fiduciary relationship, *Continental Illinois National Bank & Trust Company* v. *Continental Illinois National Bank & Trust Company,* 87 F. 2d 934, 936 (7 Cir. 1937). A constructive trust will arise in the absence of a fiduciary relationship, where there is an abuse of a relationship of confidence or dependence, *Lawson* v. *Haynes,* 170 F. 2d 741, 744 (10 Cir. 1948); *Berthelot* v. *Isaacson,* 278 F. 921, 923 (5 Cir. 1922), or where a party takes advantage of his position, *Angle* v. *Chicago St. Paul, etc. Railway,* 151 U. S. 1, 26 (1894); 4 *Scott on Trusts,* §468; 3 *Pomeroy's Equity Jurisdiction* (4th Ed.), §1053.

5.

The United States Government stood in the sort of relationship to petitioners that will give rise to a constructive trust. This Court has stated that the government's dealings with Indians "should therefore be judged by the most exacting fiduciary standards" *Seminole Nation* v. *United States,* 316 U. S. 286, 297 (1942) and cases cited at p. 296.

See also *Board of Commissioners* v. *Seber*, 318 U. S. 705, 718 (1943). Congress had enacted that the provisions of the Northwest Ordinance, 1 Stat. 50, that "the utmost good faith shall always be observed towards the Indians" were applicable to the Louisiana Purchase, 2 Stat. 283, in which petitioners' lands are located.

6.

That the consideration paid to each of the petitioner tribes for the cession of the lands in question, was unconscionable, has not been disputed by defendant, and was so held by both the Commission and the Court of Claims. Consideration so inadequate as to be unconscionable is a species of fraud against which equity will give relief. *Chesterfield* v. *Janssen*, 2 Ves. Sen. 125 (Lord Hardwicke, L.C. 1750); *Hume* v. *U. S.*, 132 U. S. 406, 411, 414 (1889); *Bowen* v. *Kutzner*, 167 Fed. 281, 287 (4 Cir. 1908).

7.

Clearly, the government's actions in acquiring Indian land for an unconscionable consideration, fall far short of the "utmost good faith" required by Congress or "the most exacting fiduciary standards" required by this Court. Hence, an unmistakeable case arises for the imposition of a constructive trust.

8.

The Commission and the Court of Claims both held that the sole remedy available to each tribe was damages, measured by an arbitrary figure that was only a fraction of what the government actually received upon disposition of the ceded lands. Such a remedy is not adequate and complete and therefore does not extinguish petitioners' claims for equitable relief by way of imposition of a constructive

trust, "To bar equitable relief the legal remedy must be equally effectual with the equitable remedy, as to all the rights of the complainant." *Lewis* v. *Cocks*, 90 U. S. 466, 470 (1874). See also *Terrace* v. *Thompson*, 263 U. S. 197, 214 (1923); *Hillsborough* v. *Cromwell*, 326 U. S. 620 (1946).

9.

The Court of Claims committed error:

(a) In holding that a constructive trust can only arise out of an express fiduciary relationship (App. B, pp. 45a-47a), whereas the laws is to the contrary, 4 *Scott on Trusts*, §462.1.

(b) In holding that the Indian Claims Commission Act restricts defendant's liability to the fair market value of the land (App. B, p. 47a). There is no such provision in the Act. On the contrary, Congress directed the Commission to give relief that is broader than mere legal damages, namely: "The Commission shall hear and determine * * * all * * * claims * * * in equity" (25 U.S.C. 70a (2)), and "claims based upon fair and honorable dealings that are not recognized by an existing rule of law or equity." (25 U.S.C. §70a (5)). Any fair reading of this statutory language,—including the mandatory "shall hear and determine",—excludes any restriction of liability to fair market value.

(c) In holding that there had been legislative acquiescence in the judicial restriction of liability to fair market value (App. B, p. 49a). Since the case at bar is the first one arising under the Indian Claims Commission Act to have presented to the Court of Claims a claim for the recovery of the government's

profits on the basis of a constructive trust, the theory of legislative acquiescence was erroneously invoked.

(d) In holding that recovery of a lesser sum under one of the causes of action asserted is a bar to the recovery of a larger sum under a separate cause of action based upon an entirely different statutory grant of jurisdiction. The Indian Claims Commission Act does not restrict an Indian tribe that has more than one claim to recovery under the single claim that would produce the smallest amount. On the contrary, Congress intended that *all* claims be disposed of (*supra*, pp. 5-6).

10.

By holding that recovery of the difference between the consideration paid and the fair market value of the lands constitutes a bar to consideration on the merits of petitioners' cause of action for the enforcement of a constructive trust, the Court of Claims has not only failed to carry out the legislative mandate contained in the Indian Claims Commission Act, but has frustrated the intention of Congress that *all* claims of Indians, including claims in equity and claims not cognizable in law or equity but based on fair and honorable dealings, should be heard and determined once and for all.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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[APPENDICES FOLLOW]